



Home Health and Hospice Weekly: Recap of LeadingAge Updates

December 2, 2022

Upcoming LeadingAge Coronavirus Calls. All calls are at 3:30 PM ET. On Monday December 5, Ryan Brooks, Senior Principal, Healthcare Strategy at National Investment Center for Seniors Housing & Care (NIC) will join us to talk about NIC's latest WAVE of its survey of senior living and nursing home operators. We'll talk to ryan about the new questions that were added in this wave about portfolio diversification and about the finding that 25% of respondents said they are planning to downsize or close their nursing home and or short-term rehab units. **On Wednesday, December 7,** Dr. Dan Kelly, from the University of California, San Francisco (UCSF) will join us to discuss their latest study on the impact of vaccines and boosters. Kelly and his team identified 1.6 million people who were fully vaccinated. Three quarters of them were over age 65 and 70% had a pre-existing condition that put them at greater risk of becoming seriously ill from COVID. Even while Delta and Omicron were circulating, these vaccinated and boosted individuals, reported in JAMA, were less likely to experience breakthrough infection and serious illness than those who had not been vaccinated and boosted. If you haven't registered for LeadingAge Update Calls, [you can do so here](#). You can also find previous call recordings [here](#). Note that to access recordings of the calls you need a LeadingAge password. Any staff member of any LeadingAge member organization can set up a password to access previous calls and other "members only" content.

LeadingAge Letter to the Editor on New Yorker Article: Katie Smith Sloan sent a letter to the editors of the New Yorker regarding the story "How Hospice Became a For Profit Hustle." Please see the letter [here](#) that underscores that differences between our nonprofit and mission driven members and those described in the article as well as a call for action. Member talking points in response to the article can be found [here](#).

New Yorker/ProPublica Article on Hospice Published: The New Yorker published a long form investigative piece in partnership with ProPublica entitled "[How Hospice Became a For-Profit Hustle.](#)" This article really focused on fraud and abuse in the hospice industry. A number of practices, ranging from deeply unethical to illegal were highlighted throughout the article including: admitting patients not eligible for hospice, admitting patients without regard for actual informed consent (which caused them to lose access to other critical services), overprescribing opiates, and using hospice as a means to strictly bill and make money and not provide care. One overarching thread throughout the article is about the ins and outs of a False Claims Act case involving the for-profit hospice provider AseraCare. The article did draw some distinctions between for profit and nonprofit hospice which we are going to work to highlight over the coming days. Additionally, we will continue to advocate that additional oversight is needed to *target* these truly bad actors because blunt interventions may hurt those providing good hospice care as well.

Home Health Member Network Next Tuesday December 6 at 2:00 PM ET. The Home Health Member Network will be meeting Tuesday, December 6 at 2:00 PM ET to talk with the White House about accessing COVID treatments for patients as well as hearing from our own Jon Lips, VP of Legal Affairs

about a recent Department of Labor Proposed Rule introducing an analytical framework for determining whether a worker is an employee or an independent contractor under the Fair Labor Standards Act (FLSA). Sign up for the Home Health Member Network [here](#).

2022 Measures Under Consideration (MUC) List Published, Comments due December 7. As part of a newer process, CMS annually issues its Measures Under Consideration (MUC) list that compiles all the measures that have been submitted for consideration for future inclusion into various value-based and quality reporting programs. Here are the relevant home health and skilled nursing facility proposed measures from the latest [MUC list](#), which includes 2 home health quality reporting program (QRP) measures, 2 SNF QRP measures and 5 SNF Value-Based Purchasing Program (VBP) measures. LeadingAge will be reviewing these measures with the Home Health Network and Quality & Risk Management Networks in the coming days and using this member input for inclusion in our comments back to CMS. Public comments on these measures are due **December 7 at 6:00 PM ET**. If members wish to submit their own comments on these measures, they can do so [here](#). In addition, these measures will be reviewed by the Measures Application Partnership Post Acute Care and Long Term Care Work Group on **December 12**. LeadingAge sits on this work group and will use any feedback from LeadingAge members to contribute to the discussion of these proposed measures.

CDC Clarifies Infection Control Practices. On December 1, the Centers for Disease Control and Prevention clarified and posted revisions to its [Core Infection Prevention and Control Practices for Safe Healthcare Delivery in All Settings](#). CDC states these fundamental standards should be implemented in all settings where healthcare is delivered. Two new practices were added, one on injection and medication safety and the other on minimizing potential exposure. Further, CDC added consideration for broader use of source control during periods of higher levels of community respiratory virus transmission to the section on Minimizing Potential Exposures.

DOL Announces \$90 Million Funding Opportunity to Support Pre-Apprenticeship Program for Young People. To help remove academic and training barriers faced by young people, on November 30, the U.S. Department of Labor (DOL) announced [a \\$90 million funding opportunity](#) in [YouthBuild Program](#) grants to support pre-apprenticeships in high-demand industries including healthcare (and the care economy), construction, information technology and hospitality. Administered by the DOL's Employment and Training Administration, the grants will fund approximately 75 projects nationwide with individual grants ranging from \$700,000 to \$1.5 million and require a 25 percent match from applicants, using sources other than federal funding.

Eligible applicants for these grants are public or private non-profit agencies or organizations, including a consortia of such agencies or organizations. These organizations include rural, urban, or Native American/Tribal entities that have previously served opportunity youth in a YouthBuild or other similar program. The grants will be required to support occupational skills training, employment services and educational guidance to disadvantaged young people, from ages 16 to 24, in communities where barriers to basic academic and career skills development exist. Grantees must also develop program models that align with pre-apprenticeship under the Registered Apprenticeship Program. DOL expects applicants funded through this solicitation to have well established partnerships in place prior to the grant award. More information on the grants are available, at [Search Grants | GRANTS.GOV](#)

HHS Proposed Changes to Rules Governing Substance Use Treatment Records. On Nov. 28 the U.S. Health and Human Services Department, through the Office for Civil Rights (OCR) and the Substance Abuse and Mental Health Services Administration (SAMHSA), [announced proposed rules](#) designed to increase provider coordination in treatment for substance use disorder (SUD) and to increase protections for patients concerning records disclosure to avoid discrimination. Among other issues the announcement notes that regulations specific to SUD treatment records impose different requirements than the HIPAA Privacy rule, creating barriers to information sharing by patients and among health care providers, and that Congress has directed HHS to create greater alignment. LeadingAge will review the [proposed rule](#), which is set to be formally published on Dec. 2, and a [fact sheet is available here](#). HHS will accept comments through Jan. 31, 2023, then proceed to issue a final rule. The proposed effective date of a final rule would be 60 days after its publication and the compliance date would be 22 months after the effective date.

Meeting on Medicare Coverage of Vaccines. On November 29, LeadingAge staff attended an invitation only coalition event to discuss policy options for improving vaccination rates (for influenza, COVID-18, pneumococcal, and Hepatitis B) among Medicare beneficiaries and coverage for these vaccines. The group is focusing on: closing the Medicare vaccination coverage gap (9% of Medicare beneficiaries do not have prescription drug coverage); restoring and improving vaccination rates across all recommended vaccinations; improving vaccination readiness and pandemic preparedness; and equity. We were the only aging services provider organization included in the group. Others included organizations representing pharmacies, health plans, and physicians. The conveners of the November 29 meeting will use the discussion to develop an options paper, with a target date of December 31 for a draft paper.

LeadingAge Letter on Cap Redux: LeadingAge sent a letter with two other associations on the potential for a hospice cap cut as a pay for in end of year negotiations. We want to emphasize that LeadingAge does not, in principle, oppose the policy of wage indexing and cutting the hospice aggregate cap. We believe that if thoughtfully carried out, this policy change could be beneficial for members and the hospice benefit. However, we signed onto the letter because we are opposed to using hospice dollars for non-hospice priorities. The letter can be found [here](#).

OIG Reports NGS Did Not Always Collect All Hospice Cap Overpayments. A [new audit](#) from the Office of Inspector General (OIG) finds that one Medicare Administrative Contractor (MAC), National Government Services or NGS, has skimmed on enforcement of the cap. While the report found that NGS correctly calculated the cap for hospices in their jurisdiction, NGS failed to attempt to collect \$2.1 million in net lookback overpayments due to their own internal policies. Additional internal policies at NGS delayed recoupment of payments for an average of more than two months.

Hospice Care Compare Refreshed. The November 2022 quarterly refresh for the Hospice Quality Reporting Program is now available on Care Compare. As a reminder, there will not be an update to the new hospice claims-based measures, Hospice Visits in the Last Days of Life or the Hospice Care Index. These two measures will be updated on an annual basis with the next refresh in November of 2023.

OIG Report Finds Providers Didn't Comply with Advance Care Billing Requirements. As of January 1, 2016 Medicare began paying for advance care planning conversations. Payments for these services from 2016 through 2019 totaled more than \$340 million but a new Office of Inspector General (OIG) [report](#) with [brief](#) found \$42.3 million of those payments did not comply with requirements for the services.

Specifically, most providers failed to identify how much time during the face-to-face visit was spent on discussions of advance care planning. OIG recommended to CMS more education to providers on documentation and time requirements for advance care planning discussions, recommended Medicare Administrative Contractors work to recoup the identified overpayments and instruct providers on identifying, reporting, and returning any overpayments, and finally that CMS outline when multiple advance care planning services are appropriate, and the documentation required to support these services.

Senators Seeking Data and Recommendations to Better Serve Duals. On November 22, Senators Cassidy, Tim Scott, Cornyn, Warner, and Menendez, released a [request for information](#) (RFI) seeking data and policy recommendations to improve care and coordination for individuals who are dually eligible for Medicare and Medicaid. While dually eligible individuals comprise only 19% of all Medicare beneficiaries, they constitute 34% of Medicare spending; they are 14% of Medicaid beneficiaries accounting for 30% of the program's spending. These individuals were the most likely to contract COVID and were three times as likely to be hospitalized to treat it. LeadingAge will consult with members through member network meetings and other venues as we develop comments to submit.

LeadingAge and Other National Hospice Associations Write Letter to CMS on Increasing Hospice Oversight. The four preeminent national hospice organizations – LeadingAge, the National Association for Home Care & Hospice (NAHC), the National Hospice and Palliative Care Organization (NHPCO) and the National Partnership for Healthcare and Hospice Innovation (NPHI) – are concerned by reports of rapid proliferation of newly certified hospice agencies in a handful of states that could create opportunities for fraud and abuse in the Medicare and Medicaid programs. The four organizations recently wrote a joint letter to U.S. Centers for Medicare & Medicaid Services (CMS) Administrator, Chiquita Brooks-LaSure, requesting a meeting about this important issue and encouraging “increased federal oversight...to protect hospice patients and their families, as well as the vast majority of hospice providers that properly observe Medicare and Medicaid laws and regulations.” [Read an article here.](#)

Webinar on Nutrition and Companionship. Elders who eat meals with others tend to eat healthier foods than people who eat alone. Join the American Society on Aging for a webinar that will cover: the causes and warning signs of poor nutrition, the benefits of companionship at mealtime, and resources to support nutritious meals for elders. The webinar will be hosted December 7, 1:00 –2:00 PM ET. [Register for the December 7 webinar.](#)

Webinar on Long-Distance Caregiving. Long-distance caregiving presents unique challenges. Plan to attend an American Society on Aging webinar to better understand those challenges and the services available to help people cope with the stress of caregiving from afar. The webinar will be hosted December 5, 2:00 –3:00 PM ET. [Register for the December 5 webinar.](#)

White House Campaign to Increase Rates of Updated COVID-19 Vaccinations. On November 22, the White House released a fact sheet outlining its [“Six Week Campaign to Get More Americans their Updated COVID-19 Vaccine Before End of the Year.”](#) The Plan focuses on making it even easier to get vaccinated, particularly for older people and the communities most impacted. The announcement talks about additional funding - \$350 million through the HHS Health Resources and Services Administration (HRSA) and \$125 million through the HHS Administration on Community Living (ACL).

Today's White House fact sheet specifically mentions "new enforcement guidance to ensure nursing homes are offering updated COVID-19 vaccines and timely treatment to their residents and staff." It reiterates existing requirements that residents be educated on the benefits of COVID vaccines and offered the opportunity to receive them. The fact sheet says that in its guidance, CMS will make clear that nursing homes with low vaccination rates will "be referred to state survey agencies for close scrutiny, and that those who do not comply with the requirement...will face enforcement actions, including the need to submit corrective action plans...". The language in fact repeats current requirements. Further the fact sheet indicates that the White House will work with governors to enable them to see how their state is performing compared to other states and to help them encourage action and increased vaccination uptake in the poorest performing nursing homes. A new QSO memo came out today, but it is focused on therapeutics. See item #4 below. LeadingAge and AHCA put out a [joint response](#) to the White House Fact Sheet.

LeadingAge Plan to Increase Uptake of Vaccines/Boosters and Katie Sloan Meeting with HHS Secretary Becerra. LeadingAge and AHCA were contacted by HHS Secretary Xavier Becerra on Friday evening (November 18). He asked the two associations to collaborate with HHS to increase the uptake of bivalent boosters by residents of nursing homes. LeadingAge and AHCA jointly developed and submitted [this plan](#). The plan focuses on three sets of activities: supporting nursing homes with the lowest rates of resident vaccinations/boosters to help them improve their rates; making the offering of vaccines/boosters part of the hospital discharge process; and improving the ability of all nursing homes to offer vaccines/boosters quickly when a resident agrees to be vaccinated. In the meeting, the group agreed on the following:

- Help the lowest performing nursing homes to increase their vaccination/booster rates – LeadingAge and AHCA agreed to educate association members on this and requested that HHS mobilize the QIO program to help us do so.
- Ask hospitals to make vaccines/boosters available as part of the discharge process, recognizing that 90% of nursing home admissions are people coming from hospitals. Administrator Brooks-LaSure said they would do that "very quickly."
- Find a solution that enables nursing home residents to receive vaccines/boosters quickly once they agree to be vaccinated. HHS officials said this would take some refinement and changes in current requirements related to registered vaccine administrators and state and federal reporting requirements. But they said they would look into it.

One key difference in the White House fact sheet and the LeadingAge/AHCA/HHS plan is that the White House document's discussion includes residents and staff. The plan the associations are collaborating with HHS on focuses exclusively on residents.

CMS Releases Guidance on Therapeutics. CMS released a memo today highlighting the importance of timely use of therapeutics among individuals who test positive for COVID-19. The memo, which addresses all CMS-certified settings, states that all patients testing positive for COVID should be evaluated to determine the appropriateness of monoclonal antibodies or oral antivirals to prevent serious illness and death. CMS further states that infection control should be reinforced and nursing homes should continue to comply with requirements to educate residents and staff on the importance of COVID-19 vaccination and offer or assist with accessing vaccination. We note that the guidance does not include any new policy or enforcement. Read more about this communication [here](#).

Coalition of States Petitions CMS to Rescind Vaccination Mandate Rule and Guidance. A coalition of 22 States on November 17 filed a [Petition for Rulemaking](#) asking CMS to rescind the omnibus COVID-19 staff vaccination mandate rule issued in November 2021. This is an administrative proceeding, not a lawsuit, initiated under a section of the federal Administrative Procedure Act (APA) which requires agencies to give interested parties an opportunity to request the issuance, amendment, or – as in this case – repeal of a rule. Among other issues, the States assert that CMS did not have the authority to issue the vaccination mandate, and that the agency must take changing circumstances (such as information concerning the effectiveness of vaccines to prevent disease transmission by those vaccinated) into account. The APA requires agencies to consider petitions they receive and to respond within a reasonable time. If the response is to deny a petition, agencies generally must provide a statement of the grounds for the denial. If CMS denied the petition, the States potentially could seek judicial review of that decision. If CMS elected to grant the petition, it presumably would then publish a notice of a proposal to repeal the rule and inviting public comment, following the normal rulemaking process. LeadingAge will follow this story as it develops. The participating states are Alabama, Arizona, Alaska, Arkansas, Florida, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Texas, Tennessee, Utah, Virginia and Wyoming.

Report Finds MA Plans Offering More In-Home Support Services Than Ever Before. In a new [brief](#) from Milliman, brief commissioned by the Better Medicare Alliance, more Medicare Advantage (MA) plans will offer supplemental benefits in 2023. The largest increase will be in in-home support services. The number of MA plans providing at least one of the five recently expanded supplemental benefits — in-home support services, home-based palliative care, adult day services, support for caregivers of enrollees and therapeutic massage — jumped by 35% (824 to 1,111) from 2022 to 2023. The largest increase is in in-home support services, now offered across 794 plans in 42 states.

SAVE THE DATE – February 2 from 2:00 - 3:30 PM ET, LeadingAge to host Webinar with CLA Experts on Revised PRF and ARP Rural Reporting Requirements. HRSA revised the Provider Relief Fund Reporting Requirements in late October 2022 to integrate reporting on the American Rescue Plan (ARP) Rural payments some providers received. In addition, they also updated their FAQs and policies related to lost revenues and other items. The new requirements will impact Reporting Period 4 (RP4), which kicks off January 1, 2023, and all remaining reporting periods for ARP Rural payments and other PRF general distributions such as Phase 4. This 90-minute webinar will help all aging service providers who must report on their Phase 4 and ARP Rural distributions in the next 12-18 months. It will:

- Provide a reporting refresher on what expenses and lost revenues can be funded with PRF and ARP rural payments,
- Review of the new reporting requirements and the interplay between ARP Rural and PRF payments,
- Discuss of strategies providers should consider for the remaining reporting periods, and
- Highlight common reporting mistakes and audit findings seen to date by the CLA Team.

More details on how to register will be shared in the coming weeks but members should mark their calendars now, so they don't miss this important information.

2023 Call for Session Deadline is December 5. The deadline for the 2023 Call for Session is rapidly approaching! Submit your original session idea for the opportunity to speak at the 2023 LeadingAge Annual Meeting + EXPO in Chicago, IL. [Read the full guidelines and submit your proposal here.](#)

New Education on the LeadingAge Learning Hub. Several new and recently recorded learning opportunities are available on the LeadingAge Learning Hub.

- December 14 Webinar: Join us on December 14 at 2:00 p.m. ET for the follow-up webinar to the June 2022 [Active Shooter Preparedness webinar](#). The new webinar, [Active Shooter Events: Creating and Maintaining a Secure Environment](#) will detail the appropriate controls residential communities should have in place to recognize, assess, and manage security threats and active shooter situations.
- New DEI QuickCast: [Cultivating Cultures of Belonging is a 20-minute QuickCast](#) about the role of privilege and cultural humility in creating organizations where everyone feels a sense of belonging.